

Tim Burke

**Cincinnati Bar Association
Real Estate Committee
June 6, 2017**

**Historic Preservation
Through the Lens of the King Records Case
A Property Owner's Dilemma**

- I. Historic Preservation is a Public Purpose
 - A. *Penn Cent. Transp. Co. v. New York City*, 438 US 104, 98 S.Ct. 2646 (1978).

- II. Private Property Owners' Rights Can Be Impacted in a Variety of Ways
 - A. Purchasing a building designated as historic or in a historic district – the Dennison.
 - B. Purchasing a building with demolition orders on it – Smith Family Foundation, OTR.
 - C. Owning one old building that became part of an assemblage – Lenhardt's – that someone wants to be declared historic.
 - D. Owning one old building when someone succeeds in getting it declared historic -- King Records, birthplace of the Twist? Dynamic Industries purchased a portion of what was King Records approximately a decade ago. Even then, the building was badly deteriorated and Dynamic Industries purchased it as part of a larger assemblage.

Problems for the property owner:
 - 1) The condition of the building is and has been for many years badly deteriorated. Planned to demolish upon/for sale.

2) The current Cincinnati Municipal Code provides that “no historic structure or historic site may be demolished or excavated during the pendency of a designation application which commences upon the filing of a complete designation application.” CMC 1435-07-2-A.

- Such an application can be filed by Council, a member of Council, the City Manager, the Urban Conservator, City Planning Commission, or a local community organization, including but not limited to, preservation associations and community councils.

- In the case of King Records, the application was filed by the Bootsy Collins Foundation and the Cincinnati USA Music Heritage Foundation.

Problems include:

- 1) What constitutes a complete application and how is that determined?
- 2) What constitutes an appropriate “local community organization”?
- 3) Who filed a complete application first?

State ex rel. Dynamic Industries v. Cincinnati, 147 Ohio St.3d 422, 216 Ohio 7663, upheld a four-sentence Hamilton County Court of Appeals decision granting the City’s Motion to Dismiss Complaint Seeking Mandamus among other things. The critical issue in the Supreme Court’s mind related to the fact that Dynamic Industries had not filed an application for a Certificate of Appropriateness.

Once a historic site is designated, in order to obtain a Certificate of Appropriateness to tear down a building, a property owner must show it would suffer economic hardship and the Historic Board must consider if the property owner be

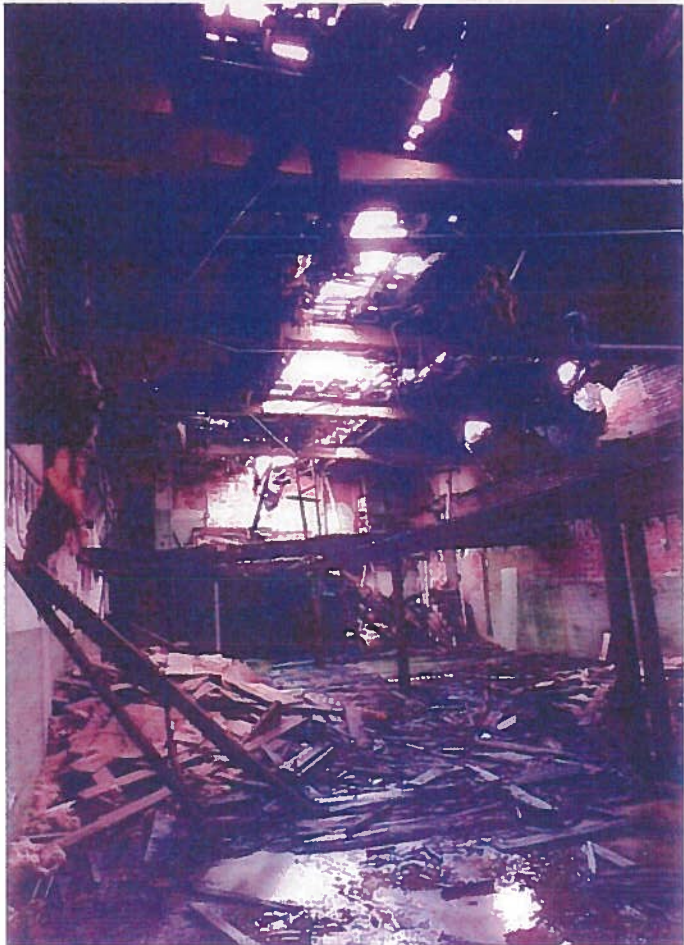
deprived of all economically viable use, will reasonable investment-backed expectations of the property owner be maintained and so on.... CMC 1435-09-2.

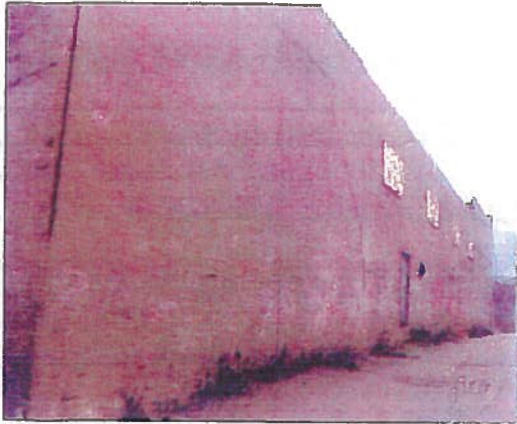
Following the Supreme Court decision, Dynamic Industries did apply for a Certificate of Appropriateness. The City's own appraisal issued initially September 23, 2015 and then updated on January 31, 2017, stated unequivocally: "the overall condition of the improvement is dilapidated and provides no contributory market value to the site" ... "the building has no aesthetic appeal and is nearly falling down with significant funds necessary just to keep the walls standing. Assigning the subject a historic designation is a viable request by the community as this location has had a major impact on the music industry, but in terms of market value of the real property in place, as of the effective date, it is not financially feasible to stabilize and redevelop the structure" ... "Assemblage of the subject with adjacent parcels and redevelopment of the site for mixed use is the only use that meets the four tests of highest and best use; therefore, it is concluded to be the highest and best use of the property as vacant."

The City's own independent structural expert, Bradley Rogers, Senior Project Manager for SSRG, estimated that it would cost \$450,000 to \$500,000 simply to bring the building up to vacant building standards.

Cincinnati Municipal Code, Section 1435-09-3, allows the Historic Conservation Board to delay consideration of a Certificate of Appropriateness for six months. That is what has happened in this case and it is where the matter stands now while the City also considers pursuing an eminent domain acquisition of the property for which they have made an initial offer of \$220,000.00.

N:\CLIENTS\King Records\Misc\A Property Owner's Dilemma.6-6-17.TMB.doc-rrb





Exterior Elevation Facing NE
(Photo Taken on January 20, 2017)



Interior
(Photo Taken on January 20, 2017)



Interior
(Photo Taken on January 20, 2017)



Interior
(Photo Taken on January 20, 2017)



Interior
(Photo Taken on January 20, 2017)



Interior
(Photo Taken on January 20, 2017)

